

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SANTIAGO MANUEL ZAMORA,

Plaintiff,

v.

JEFF LYNCH.

Respondent.

Case No. 1:24-cv-00040-CDB

ORDER DIRECTING RESPONDENT TO
RESPOND TO PETITIONER'S MOTION TO
STAY, SETTING BRIEFING SCHEDULE,
AND DIRECTING SERVICE OF
DOCUMENTS

(Doc. 2)

21- DAY DEADLINE

Petitioner Santiago Manuel Zamora ("Petitioner"), represented by counsel, is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed on January 9, 2024. (Doc. 1). That same day, Petitioner also filed a motion to stay pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003), or in the alternative pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). (Doc. 2). Petitioner seeks to have claim two, to the extent it alleges prosecutorial misconduct other than a *Brady* violation, and claim five dismissed from the petition, without prejudice, while he exhausts his remedies in state court on those claims. *Id.* at 3.

The Court has conducted a preliminary review of the petition. *See* R. Governing § 2254 Cases ("2254 Rules") 4; 28 U.S.C. § 2243. Since Petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, Respondent will be directed to file a response

1 to petitioner's habeas petition. *See* 28 U.S.C. § 2243. The Court will also direct Respondent to
2 file a response to the motion for stay. Should Respondent not oppose the motion for stay, the
3 Court will deem such notice of non-opposition as a request for an extension of time to respond
4 to the habeas corpus petition. In that circumstance, the Court will rule on the motion for stay and
5 direct further briefing as necessary on the underlying habeas petition.

6 Accordingly, it is HEREBY ORDERED:

- 7 1. No later than 21 days from the date of entry of this Order, Respondent shall file a
8 response to Petitioner's motion to stay. (Doc. 2).
9 2. Upon resolution of Petitioner's motion to stay (Doc. 2), if appropriate, Respondent
10 shall have thirty (30) days thereafter to file a response to the petition (Doc. 1) and
11 show cause why the petition should not be granted. A response may be one of the
12 following:

13 (A) An answer addressing the merits of the petition. This response may not
14 exceed fifty (50) pages in length without the Court's leave. Any answer shall be
15 accompanied by all transcripts and other documents relevant to the issues presented
16 in the petition. *See* 2254 Rule 5.

17 (B) A motion to dismiss the petition. This limited response must include only
18 portions of the state record necessary for the court to decide the bar to a merits review.

- 19 3. The Clerk of Court is directed to send an electronic copy of this order to the Attorney
20 General of the State of California, and to mail a copy of this order to Petitioner.

21 IT IS SO ORDERED.

22 Dated: January 22, 2024

23 
UNITED STATES MAGISTRATE JUDGE